

**Comments of the Western Power Trading Forum to the California Air
Resources Board on the Proposed Regulation for an Administrative Fee to fund
implementation of AB32**

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The Western Power Trading Forum¹ (WPTF) appreciates the opportunity to provide input to the California Air Resources Board (ARB) on its proposed regulation for an Administrative Fee to fund implementation of activities under Assembly Bill 32. In general, WPTF considers that the proposed approach for calculating the fee for individual entities and the points of application for the fees is reasonable and appropriate. However, we have several concerns:

- The total revenue requirements for AB32 implementation are open-ended and the process for determination of these revenue requirements lacks sufficient transparency and accountability;
- Once the cap and trade system is operational, sectors covered by the system should be exempted from the Administrative Fee.
- Additional consideration should be given to whether to apply the fee to imported electricity.

Our specific comments on these issues are provided below.

Determination of Total Revenue Requirements

Section 95203 of the proposed regulation defines the total revenue requirements for the Administrative Fee program as follows:

¹ WPTF is a diverse organization comprising power marketers, generators, investment banks, public utilities and energy service providers, whose common interest is the development of competitive electricity markets in the West. WPTF has over 60 members participating in power markets within the WCI member states and provinces, as well as other markets across the United States.

“(1) The Required Revenue (RR) shall be the total amount of funds necessary to recover the costs of implementation of AB 32 program expenditures each Fiscal Year, based on the number of personnel positions and contracts approved in the California budget for that fiscal year.

(2) For Fiscal Years 2009/2010, 2010/2011 and 2011/2012, the RR shall also include the payments required to be made by ARB on the Debt.

(3) The RR shall also include any amounts required to be expended by ARB in defense of this Article in court.

(4) The amount of the Debt payment (if any) or any carryover (as provided in section 95203 (a) (4)) in addition to the Required Revenue shall be the Total Required Revenue (TRR).

(5) If there is any excess or shortfall in the actual revenue collected after the first three years of collection, or if any collections are less than the RR, such shortfall or excess shall be carried over to the next year’s calculation of the TRR.”

WPTF is concerned that the proposed regulation lacks a clear and precise definition of “AB32 programs” and as a result, the total revenue requirements for the Administrative Fee program are potentially open-ended. At the concept workshop on January 27th, ARB staff indicated their intent was that only new programs developed explicitly to reduce emissions under AB32 would be funded through the fee. However, there is no such definition in the proposed regulation. What then would prevent ARB and other agencies from adding new ‘AB32 programs’ or re-characterizing existing programs as such? WPTF therefore recommends that the proposed Regulation be modified to clearly and precisely define the activities that would be considered “AB 32 programs”

WPTF also shares the concerns raised by other stakeholders regarding the lack of transparency and accountability regarding the use of fee revenues. At the January 27th workshop, ARB Staff indicated that AB32 program costs (i.e. revenue requirements) for the 2009/2010 year were estimated to be \$55 million, but failed to provide an itemized list of programs and expenditures used in this calculation. The fact that revenue requirements will be determined through the California budget process will provide some legislative oversight, but this process is not transparent to stakeholders nor is it likely to

ensure sufficient accountability. For these reasons, WPTF supports the recommendations made by the AB32 Implementation Group that ARB disclose the programs and costs to be covered by fee revenues, and provide for audit and review of the program.

In summary, WPTF recommends that the regulation be modified to:

- clearly and precisely define “AB 32 programs”;
- Require ARB to annually develop and publish an itemized list of the specific measures and expenditures that are to be funded through the fee for that year;
- Provide for independent audit of the Administrative Fee program; and
- Establish an advisory group of entities subject to the fee to review program implementation.

Sectors covered by the cap and trade program should not be subject to the Administrative Fee

In December 2008, ARB endorsed a multi-sector cap and trade program, consistent with the design developed by the Western Climate Initiative, as a core element of the Scoping Plan. The WCI program calls for at least 10% of allowances to be auctioned initially, transitioning to 25% by 2020. Hence, WPTF anticipates that once the cap and trade system is operational, capped entities will be required to purchase at least some portion of their required allowances through auction. Continuation of the Administrative Fee program at this point would result in capped entities being charged twice for the same emissions – once for the cap and trade system and again for the Administrative Fee program.

For this reason, WPTF requests that ARB add a provision to the Regulation that would exempt sectors covered by the cap and trade system from the Administrative Fee, once that system is operational. A portion of auction revenues could then be used to fund implementation of AB32 activities, as suggested in the Scoping Plan.

Application of the fee to Imported Electricity

WPTF does not have a position on whether the Administrative Fee should apply to electricity imports, but offers the following observations.

- The application of the fee to in-state natural gas production and consumption will increase the costs of electricity production for in-state generators. If the fee is significant, this could disadvantage in-state generators relative to out-of-state competitors.
- The application of the fee to imported electricity could have unintended consequences: if California were to require out-of-state generators to help fund implementation of AB32, what would prevent other states from applying similar fees to California's electricity exports? In light of the current fiscal crisis and efforts underway in the Western Climate Initiative, it is quite likely that other Western states will be looking to find ways to fund GHG reduction programs.